

IN THE SUPREME COURT OF OHIO

<p>STATE OF OHIO <i>ex rel.</i> XX,</p> <p style="padding-left: 40px;">Relator,</p> <p>v.</p> <p>XX, PROSECUTING ATTORNEY, XX COUNTY, OHIO, et al.,</p> <p style="padding-left: 40px;">Respondents.</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>Case No. XX</p> <p>MOTION OF REAL PARTY IN INTEREST, A.A., TO INTERVENE</p>
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MOTION TO INTERVENE OF REAL PARTY IN INTEREST, A.A.

I. Introduction

Now comes A.A., the crime victim in the underlying case, *State v. XX*, XX County Common Pleas Case No. XX-CRM-XXX, and respectfully requests that this Honorable Court permit her to intervene in the instant matter pursuant to Civil Rule 24. A.A. is the real party in interest in this matter, and intervention is necessary to preserve her constitutional rights as set forth more fully below.

II. Facts and Procedural History

Relator, XX, is the father of XX XX. XX XX is A.A.'s former teacher and coach, who pled guilty to, and was convicted of, nine counts of sexual battery for crimes committed against A.A. while she was a high school student. Following his conviction and sentencing, XX's family members, including Relator, instituted a public smear campaign against A.A. through a Facebook page and website. Relator's public postings have attacked A.A.'s personality, credibility, family, and sense of safety. Relator's postings included the use of A.A.'s images without her consent. The damage that A.A. has suffered as a result of the crimes perpetrated by Relator's son, and now the personal attacks perpetrated by Relator, is inestimable.

III. Law and Argument

Civil Rule 24 provides for intervention, as follows:

(A) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this state confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(B) Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of this state confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

This Court encourages liberal construction in favor of intervention. *State ex rel. Watkins v. Eighth Dist. Court of Appeals*, 82 Ohio St.3d 532, 534, 1998-Ohio-190, 696 N.E.2d 1079.

Liberal construction is favored because it “serves judicial economy, by avoiding a multiplicity of actions.” *In re J.T.F.*, 2nd Dist. Greene No. 12-CA-03, 2012-Ohio-2105, ¶ 20, citing *Creter v. Council of City of Westlake*, 8th Dist. Cuyahoga No. 49848, 1985 Ohio App. LEXIS, 1985 WL 8577, *2 (Aug. 1, 1985). Intervention is appropriate when the intervenor has “an interest relating to the property or transaction that is the subject of the action * * *.” *State ex rel. N.G. v. Cuyahoga Cnty. Court of Common Pleas*, 147 Ohio St.3d 432, 2016-Ohio-1519, 67 N.E.3d 728, ¶ 22. In addition, the motion to intervene must be timely filed. *See id.* at ¶ 23. Here, A.A. has a significant interest in the subject of the action—her constitutional rights to privacy. *See Bloch v. Ribar*, 156 F.3d 673, 686 (6th Cir.1998) (“[A] rape victim has a fundamental right of privacy in preventing government officials from gratuitously and unnecessarily releasing the intimate details of the rape where no penalogical [sic] purpose is being served.”).

In *Bloch*, the Sixth Circuit determined that release of the intimate details of a sexual assault implicates the victim's fundamental, constitutional informational right to privacy. *See id.* at 683. The court reasoned that

a historic social stigma has attached to victims of sexual violence. In particular, a tradition of ‘blaming the victim’ of sexual violence sets these victims apart from those of other violent crimes. Releasing the intimate details of rape will therefore

not only dissect a particularly painful sexual experience, but often will subject a victim to criticism and scrutiny concerning her sexuality and personal choices regarding sex. This interest in protecting the victims of sexual violence from humiliation, among other injuries, has prompted states to pass rape shield laws and to advocate against the publication of rape victims' names.

Id. at 685. Therefore, “the right to prevent the dissemination of confidential and intimate details of a rape implicates a fundamental right * * *.” *Id.* at 686. The Sixth Circuit concluded by ensuring that “public officials in this circuit will now be on notice that such a right to privacy exists.” *Id.* at 687.

Ohio's passage of Marsy's Law further bolstered victims' constitutional rights to privacy. On November 7, 2017, an overwhelming 83% of Ohio voters passed Marsy's Law, a constitutional amendment for crime victims. Pursuant to Article I, Section 10a(D) of the Ohio Constitution, “ ‘victim’ means a person against whom the criminal offense or delinquent act was committed or who is directly and proximately harmed by the commission of the offense or act.” As the person against whom XX XX committed sexual battery, A.A. meets the constitutional definition of “victim.”

Marsy's Law provides Ohio's victims with concrete, enforceable rights during the criminal justice process. Specifically, Marsy's Law explicitly requires that victims be “treated with fairness and respect for [their] safety, dignity, and privacy” throughout the criminal justice process. Ohio Constitution, Article I, Section 10a(A)(1). By its terms, Marsy's Law “supersede[s] all conflicting state laws,” making these new constitutional rights superior to existing statutory laws or court rules. Ohio Constitution, Article I, Section 10a(E). It is the role of the courts to give life and meaning to constitutional provisions granting rights to Ohio citizens. As the United States Supreme Court has stated of the U.S. Constitution: “Specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give

them life and substance.” *Griswold v. Connecticut*, 381 U.S. 479, 484, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965). Marsy’s Law has changed the legal landscape for crime victims in Ohio and has fundamentally altered the balancing test that courts must utilize when considering victims’ rights issues.

Having established a fundamental constitutional right to prevent dissemination of the details of the sex crimes perpetrated against her, A.A. must be allowed to intervene of right. *See N.G.*, 147 Ohio St.3d 432, 2016-Ohio-1519, 67 N.E.3d 728 at ¶ 22, citing *Troxel v. Granville*, 530 U.S. 57, 66, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000) (“S.F. has an interest relating to the property or transaction that is the subject of the action: her fundamental constitutional right to make decisions concerning the care, custody, and control of her children.”). The disposition of this action without her participation will impair A.A.’s ability to protect that interest.

Finally, neither Respondents nor Relator have a personal stake in A.A.’s constitutionally guaranteed privacy rights. In fact, Relator has challenged Respondents’ standing to defend A.A.’s privacy rights. Relator’s Response to Respondents’ Motion for Judgment on the Pleadings, 4 (“The Prosecutor is not the complaining witness’s attorney and has no standing to assert her ambiguous privacy rights.”). Therefore, Relator cannot assert that Respondents will adequately represent A.A.’s interests. Relator will not defend A.A.’s right to privacy, as evidenced by the fact that he is the one seeking to violate it. Thus, neither party to the case can adequately protect A.A.’s interest in the outcome of this action. Acknowledging this fact, Relator stated: “If [A.A.] believes she has a privacy right in the records at issue, *she may intervene in this action to protect it.*” (Emphasis added.) Relator’s Response to Respondents’ Motion for Judgment on the Pleadings, 11. Therefore, A.A. should be permitted to join the action.

In addition to the fact that the instant motion meets the substantive requirements of Civil Rule 24(A), A.A.'s motion is also timely filed. A.A. is filing this motion before the time this Court has set for submission of evidence. This Court considers five factors when determining whether a motion to intervene is timely:

‘(1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of his interest in the case; (4) the prejudice to the original parties due to the proposed intervenor’s failure after he knew or reasonably should have known of his interest in the case to apply promptly for intervention; and (5) the existence of unusual circumstances militating against or in favor of intervention.’

Id. at ¶ 23, quoting *State ex rel. First New Shiloh Baptist Church v. Meagher*, 82 Ohio St.3d 501, 503, 1998-Ohio-192, 696 N.E.2d 1058 (1998), quoting *Triax Co. v. TRW, Inc.*, 724 F.2d 1224, 1228 (6th Cir.1984).

This matter has only progressed to the submission of evidence. A.A.'s intervention will not delay briefing or oral argument on this matter. The purpose for which A.A. seeks to intervene is significant—to assert and protect her fundamental constitutional right to privacy. A.A. has only recently become aware of her ability to assert her rights in this matter and acted promptly to retain counsel. The original parties will not be prejudiced by delay if A.A. is allowed to intervene. The unusual circumstances of this case militate in favor of A.A.'s intervention because A.A. is fighting the release of information that Relator has, in the past, used to publicly attack her. Therefore, by the standards set forth in *State ex rel. N.G.*, this motion is timely. *See N.G.* at ¶ 23.

Further, A.A. must be joined as a necessary party to this action. Civil Rule 19(A) provides that joinder is required when a person “claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (a) as a practical

matter impair or impede his ability to protect that interest.” “Moreover, a party’s failure to join an interested and necessary party constitutes a jurisdictional defect that precludes the court from rendering a judgment in the case.” *Id.* at ¶ 27, citing *State ex rel. Doe v. Capper*, 132 Ohio St.3d 365, 2012-Ohio-2686, 972 N.E.2d 553, ¶ 15, citing *Portage County Bd. of Comm’rs v. City of Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, 846 N.E.2d 478, ¶ 99. As this Court has noted, a case that profoundly affects a fundamental right cannot be properly decided without joining all necessary parties. *See id.* For all of the reasons discussed above, A.A. has a substantial, constitutional interest in the subject of this action, and, as a practical matter, she will have no ability to protect that interest if this action proceeds without her intervention.

Finally, if this Court finds that mandatory intervention is not required, A.A. asks to be permitted to intervene as her claims and defenses share common questions of law and fact with the main action, pursuant to Civil Rule 24(B). A.A.’s intervention will not unduly delay the proceedings or prejudice the adjudication of the rights of Relator or Respondents, as this motion is filed timely as set forth above.

IV. Conclusion

For the aforementioned reasons, A.A. respectfully requests that this Honorable Court permit her to intervene in this action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following via the Supreme Court Electronic filing system and/or electronic mail, this 19th day of July 2019 upon:

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